

**At a Regular Meeting of the Town Council of the Town of Middletown,  
RI held at the Middletown Town Hall on Monday, October 19, 2015 at  
6:00 P.M.**

**Council President Robert J. Sylvia, Presiding**

**Vice President Robert Kempenaar, II**

**Councillor Henry F. Lombardi, Jr.**

**Councillor M. Theresa Santos**

**Councillor Antone C. Viveiros**

**Councillor Barbara A. VonVillas, Members Present**

**Councillor Paul M. Rodrigues, Absent**

**PLEDGE OF ALLEGIANCE TO THE FLAG**

## **RECONSIDERATION**

**The Middletown Town Council follows the codification of present-day general parliamentary law as articulated in Robert's Rules of Order Newly Revised 10th edition (2000), together with whatever rules of order the Council has adopted for its own governance. The motion to reconsider is one of the motions that can bring a question again before an assembly, and is designed to bring back for further consideration a motion which has already been voted on:**

**If, in the same session that a motion has been voted on, but no later than the same day or the next day on which a business meeting is held, new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can, by moving to Reconsider [RONR (10th ed.), p. 304-321] the vote, propose that the question shall come before the assembly again as if it had not previously been considered. (From Robert's Rules of Order Newly Revised In Brief, Robert, Evans et al., De Capo Press, 2004)**

## **6:00 PM - EXECUTIVE SESSION**

**1. Executive Session - Pursuant to provisions of RIGL, Sections 42-46-2, 42-46-4 and 42-46-5 (a) (1) personnel (Town Administrator) and (5) Land Acquisition (West Main Road).**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to recess open session and reconvene in executive session at 6:02 p.m.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to recess executive session and reconvene in open session at 7:00 p.m.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to seal the executive session minutes pursuant to**

## **Section 42-46-7. RIGL.**

### **PUBLIC FORUM**

**2. Pursuant to Rule 23 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting. All items discussed during this session will not be voted upon.**

**Margaret A. Kirschner, 8 Pleasant Street, Newport, Rhode Island, Co-Chair of the Restoration Advisory Board (RAB), addressed the Council noting the RAB Board was established 20 years ago, it is a great board, which provides community awareness of status and progress of environmental remediation work of certain Navy properties.**

**Dr. David Brown, 600 Valley Road explained that the RAB Board is involved in land management and clean ups of Navy Property. Mr. Brown noted the need of younger blood on the board.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to act as a board of license commission.**

## **ACTING AS A BOARD OF LICENSE COMMISSION**

### **3. (Public Hearing Advertised)**

**Applications received from the following named persons, firms or corporations for RENEWAL of Alcoholic Beverage Licenses for the 2015-2016 licensing year. (See attached list)**

**Public Hearing was declared open.**

**There being no persons present desiring to be heard, public hearing was declared closed.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said license renewals.**

#### **4. (Public Hearing Advertised)**

**Application of Gilbert-Burton VFW Post #4487 dba Captain Kenneth L. Gilbert Post #4487, 52 Underwood Lane, for a Class D Liquor license to be used at the same premises.**

**Public Hearing was declared open.**

**There being no persons present desiring to be heard, public hearing**

**was declared closed.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said license.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to reconvene as a Town Council.**

**Vice President Kempenaar requested that items #5, #7, #8, #9 and #10 be heard under the regular portion of the docket.**

## **CONSENT**

**5. Approval of Minutes, re: Regular Meeting, October 5, 2015.**

**Councillor Santos questioned if the GFOA ward, presented at the October 5, 2015 meeting, is an organization just for Finance Departments and if dues are required?**

**Town Administrator Shawn Brown, responding to Councillor Santos, noted that the organization is for Finance Departments and the Town pays for dues.**

**On motion of Council President Sylvia, duly seconded, it was voted unanimously to approve said minutes.**

**6. At the request of Council President Sylvia,**

**Resolution of the Council, re: Supporting National Cyber Security Awareness Month.**

**On motion of Vice President Kempenaar, duly seconded, it was voted**



**unanimously to pass said resolution.**

**7. Communication of Tax Assessor, with enclosure, re: Cancellation of taxes for certain Middletown residents.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.**

**8. Resolution of the Council, re: Cancellation of taxes for certain Middletown residents.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to pass said resolution.**

**9. Communication of Tax Assessor and Finance Director, with enclosure, re: Cancellation of taxes for certain Middletown residents.**

**Councillor Santos questioned the procedure for return of tax bills to the Assessor by mail.**

**Town Administrator Shawn Brown noted that each return is investigated.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.**

**10. Resolution of the Council, re: Cancellation of taxes for certain Middletown residents.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to pass said resolution.**

**11. Communication of Finance Director and Accounting Manager, thru Town Administrator, with enclosure, re: Quarterly Tax Collector's Report as of 09/30/2015 – Town of Middletown.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication and report.**

**12. Communication of Peter M. Grivers, PE, LSP, Senior Project Manager, VHB, re: Reconstruction of Two Mile Corner (Routes 138/114), East Main Road & West Main Road, Coddington Highway, Middletown, Rhode Island.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.**

**13. Memorandum of Margarita H. Chatterton, Senior Sanitary**

**Engineer, RIPDES Program/Office of Water Resources, re: Continuation of the Rhode Island Pollutant Discharge Elimination System (RIPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s (MS4 GP).**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.**

**14. Notice of Public Hearing from the Town of Portsmouth Planning Board, owner Prescott Point, LLC for property located at 2547 West Main Road, Portsmouth, RI, TAP 55, Lot 1A.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said Notice of Public Hearing.**

**15. Communication of Bill Maraziti, Executive Director, James L.**

**Maher Center, re: Appreciation of support.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.**

**16. Applications received from the following named persons, firms or corporations for RENEWAL of Victualling House Licenses for the 2015-2016 licensing year. (See attached list)**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said license renewals.**

**17. (Continued from September 8th & September 21, 2015, Regular Meeting of the Council)**

**Communication of Councillor Viveiros, re: Request to continue proposal to prohibit shopping centers and big box stores. (Councillor Viveiros requests this item to be continued to November 2, 2015)**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to continue this matter to the November 2, 2015, Regular meeting of the Council.**

**18. (Continued from October 5, 2015, Regular Meeting of the Council)**

**Memorandum of Superintendent of Schools, with enclosures, re: FY 2014-15 Budget Amendments. (Item will be continued to November 2, 2015)**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to continue this matter to the November 2, 2015, Regular meeting of the Council.**

**19. (Continued from October 5, 2015, Regular Meeting of the Council)**

**Resolution of the Council, re: FY2015 School Department budget**

**adjustments. (Item will be continued to November 2, 2015)**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to continue this matter to the November 2, 2015, Regular meeting of the Council.**

**20. (Continued from September 21, 2015, Regular Meeting of the Council)**

**Memorandum of Finance Director, thru Town Administrator, with enclosures, re: Preliminary Operating Results – General Fund – Fiscal year ending June 30, 2015. (Administration requests item to be continued to November 2, 2015)**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to continue this matter to the November 2, 2015, Regular meeting of the Council.**

**21. (Continued from October 5, 2015, Regular Meeting of the Council)**

**Memorandum of Town Administrator, with enclosure, re: LOI – PPV – Solar. (Administration requests item to be continued to November 2, 2015)**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to continue this matter to the November 2, 2015, Regular meeting of the Council.**

**22. (Continued from October 5, 2015, Regular Meeting of the Council)**

**Resolution of the Council, re: LOI – PPV – Solar. (Administration requests item to be continued to November 2, 2015)**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to continue this matter to the November 2, 2015, Regular meeting of the Council.**



## **LICENSES AND PERMITS**

**23. Application for Special Event Permit from All Saints STEAM Academy, All Saints Academy Craft Sale to be held at All Saints Academy, 915 West Main Road, on Saturday, November 21, 2015 from 9:00 am to 4:00 pm. (Attached is a request to waive permit fee)**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said Special Event Permit and waive said fee.**

**24. Application of MDR Enterprises, LLC dba BMW of Newport, 1215 West Main Road, for a Holiday license for the 2015-2016 licensing year (NEW).**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said license.**

## **PUBLIC HEARINGS**

### **25. (Public Hearing Advertised)**

**Applications received from the following named persons, firms or corporations for RENEWAL of Victualling House Licenses, Additional Hours of Operation, for the 2015-2016 licensing year. (See attached list)**

**Public Hearing was declared open.**

**There being no person desiring to be heard, public hearing was declared closed.**

**On motion of Vice President Kempenaar, duly seconded, it was voted**

**unanimously to grant said license renewals.**

## **26. Public Hearing (Advertised; Abutters notified)**

**Public Hearing Remains Open.**

### **An Ordinance of the Town of Middletown (Second Reading)**

**An Ordinance in amendment to the Town Code of the Town of Middletown, Title XV Land Usage, Chapter 152 Zoning Code, seeking to change the zoning classifications of Lots 14, 23 and 23B on TAP 111 from Medium Density Residential Traffic Sensitive (R-20A) to High Density Residential (R-10). (Planning Board recommendation attached)**

**Public Hearing remains open.**

**Attorney Jeremiah C. Lynch, III, representing the applicants noted that there are Traffic, Environmental and Appraisal experts in attendance to answer Council questions from the first public hearing.**

**Chris Duhamel, DiPrete Engineering, 90 Broadway, Newport, addressed the Council noting that bringing the zoning to R-10 would be in compliance with the Comprehensive Community Plan. If the zoning is amended to R-10, the proposal for the area would be Senior Independent homes for persons over 55 years of age. There would be a limit of 37units, each with two car garage and two car driveway. An emergency access for police and fire would be on Arruda Terrace. Mr. Duhamel explained that there is a lengthy permitting process before the project can be approved.**

**Paul Bannan, Senior Project Manager, BETA Group, Providence, Traffic Engineer, addressed the Council explaining that access to the development from Thelma Lane, which has a signal, is safe and adequate for the proposed development.**

**Discussion centered around a locked gate on Arruda Terrace for public safety access only, wetlands in the area, studies regarding the watershed area have been reviewed, flooding in the area, condo units being a duplex or triplex single floor plan, project plans being**

**scrutinized by the Town Departments and farming in the area.**

**Jamie Moore, Certified Residential Appraiser, Warwick, RI, addressed the Council explaining that the median home prices in the area is \$270,000 to \$288,000. Ms. Moore explained that the proposed price of the condos are \$350,000, which would increase current property values.**

**Discussion centered around potential buyers of the property, the condominium association and protections for the area built into condo declaration documents.**

**Russell Budlong, 107 Amesbury Circle, noted concern about flooding on his property.**

**Clarence Rego, 565 Aquidneck Avenue, owner of 1647 West Main Road, noted concern with the water in the area along with many items that a neighbor may have buried on the property. Mr. Rego would like**

**to see that any contaminates on the property are cleaned up.**

**Joanne Cassese, 25 Arruda Terrace, noted opposition to the zoning change and requests the Council to keep the property as open space.**

**Attorney Jeremiah C. Lynch, III, noted that the applicants are willing to agree to the following conditions for the zoning change –**

- 1. No more than thirty seven (37) two bedroom units, each with approximately 1,500 square feet of living area, be constructed on the premises;**
- 2. Access to the property shall be over Thelma Lane; and**
- 3. Arruda Terrace may only be used by the Fire Department or Police Department as emergency access to the premises.**

**Michael Quink, 20 Arruda Terrace, addressed the Council inquiring**

**what the next step to this process is.**

**Town Solicitor Peter B. Regan explained that if the Council adopts the zoning change with conditions, the applicants would have to submit a formal development plan and follow the process through the Planning Board, Zoning Board, Department of Environmental Management, and Department of Transportation.**

**There being no other persons desiring to be heard, public hearing was declared closed.**

**On motion of Vice President Kempenaar, duly seconded, it was voted to adopt said ordinance on its second reading with the following conditions - The subject property (Lots 14, 23 & 23B) must be used for Senior Independent Living Facilities, as defined by the Middletown Zoning Ordinance;**

**1. No more than thirty seven (37) two bedroom units, each with**

**approximately 1,500 square feet of living area, be constructed on the premises;**

**2. Access to the property shall be over Thelma Lane; and**

**3. Arruda Terrace may only be used by the Fire Department or Police Department as emergency access to the premises with a gate and lock, unless Town Officials would like something else.**

**Council President Sylvia, Vice President Kempenaar, Councillor Lombardi and Councillor VonVillas voted YES to said motion; Councillor Santos and Councillor Viveiros voted NO.**

## **ORDINANCES**

### **27. An Ordinance of the Town of Middletown (First Reading)**

**An ordinance in Amendment to the Town Code of the Town of Middletown, Title XIII, General Offenses, Section 130.04, “Smoking Prohibited on Public Beaches, Recreational Areas and Parks”.**



**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said ordinance on its first reading.**

**28.**

**Memorandum of Town Solicitor, re: Proposed Amendments to Town Code, Chapter 95, Entitled “Tow Trucks and Parking Lots”.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.**

**29. An Ordinance of the Town of Middletown (First Reading)**

**An ordinance in Amendment to the Town Code of the Town of Middletown, Title IX, General Regulations, Chapter 95 Tow Trucks and Parking Lots.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said ordinance on its first reading.**

## **TOWN COUNCIL**

**30.**

**Memorandum of Council President, re: Funding Allocation Request for Youth Recreational Fields.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.**

**Council President Sylvia read the above memorandum into the record.**

**Town Administrator Shawn Brown reviewed the following Suggested Priority Safety Projects table, entered here:**

**Town Administrator Shawn Brown noted that the estimated costs for the upgrades to the fields is approximately \$150,000 and the funding will come from a non-tax revenue fund.**

**Council discussion centered around the importance of the project, efforts by the Town departments, an operational agreement and maintenance plan with Little League and future maintenance of the fields.**

**On motion of Council President Sylvia, duly seconded, it was voted unanimously to allocate \$150,000 to the Town Administrator toward the work, which needs to be accomplished at the Town fields.**

**31. (Continued from October 5, 2015, Regular Meeting of the Council)**

**Communication of Councillor Viveiros, re: Discuss amending the Comprehensive Plan to align it with the Town zoning.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.**

**Councillor Viveiros noted concern with there being many Zoning Ordinance changes because of the newly Adopted Comprehensive Community Plan. Mr. Viveiros explained that the Zoning Ordinances are more stringent than the Comprehensive Community Plan, which protects the quality of life in the Town.**

**OTHER COMMUNICATION**

**32.**

**Communication of Thomas C. Ardito, with enclosure, re: Draft Resolution of Support for Solarize Aquidneck Program.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication.**

**TOWN ADMINISTRATOR**

**33.**

**Communication of Town Clerk and Accounts Payable Clerk, thru Town Administrator, re: Request for support by matching Town Hall Employee donations for Town Hall Employee Christmas Giving fund.**

**On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said communication and approve a matching donation, up to \$500 for the Town Hall Employee Christmas Giving fund to be appropriated from the Council President's Discretionary**

**Fund.**

**On motion of Vice President Kempenaar Sylvia, duly seconded, it was voted unanimously to adjourn said meeting at 8:53 pm.**

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**Wendy J.W. Marshall, CMC**

**Town Clerk**

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